

APPEAL NO. 022712
FILED DECEMBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 2, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable injury to his left shoulder on _____; that the claimant had disability from July 13 through July 20, 2001; and that the respondent's (carrier) contest of compensability was based on newly discovered evidence which could not have reasonably been discovered earlier. The hearing officer's determinations on the compensable injury and newly discovered evidence have not been appealed and have become final pursuant to Section 410.169.

The claimant appealed the disability issue as not being supported by the evidence and asserting that his disability was from July 13, 2001, and continuing to the date of the CCH. The carrier responded, urging affirmance.

DECISION

Reversed and remanded.

In unappealed determinations the hearing officer found that the claimant sustained a compensable aggravation injury to his left shoulder on _____. It is undisputed that the claimant continued to work light duty until July 13, 2001. The hearing officer does not discuss disability in his Statement of the Evidence and the only factual determination on disability is the appealed finding that the "Claimant's restrictions only ran to July 20, 2001." The hearing officer makes no mention of an MRI performed on June 13, 2001, which showed a full thickness rotator cuff tear. Also in evidence is a Work Status Report (TWCC-73) releasing the claimant to light duty with a five-pound lifting restriction and instruction to "wear splint/cast at work" as of June 19, 2001 through July 20, 2001. (This TWCC-73 notes the MRI results and notes the shoulder is "more sore/painful even [with] light duty.") The hearing officer apparently believed that the TWCC-73 ended disability and makes no mention of a subsequent TWCC-73 dated July 13, 2001, from an orthopedic surgeon which takes the claimant off work altogether as of July 13, 2001, pending surgery on August 1, 2001. It appears undisputed that the scheduled surgery was canceled because the carrier denied compensability based on the newly discovered evidence.

Given that the claimant sustained a compensable left shoulder injury we hold the hearing officer's determination that the claimant's disability ended on July 20, 2001, to be against the great weight and preponderance of the evidence, namely the claimant's testimony (which the hearing officer could disbelieve); the July 13, 2001, TWCC-73 which takes the claimant off work altogether; the MRI which shows a full thickness rotator cuff tear; and the apparent need for surgery to repair the torn rotator cuff injury.

We reverse the hearing officer's decision regarding disability and remand the case for the hearing officer to reconsider the disability issue and make specific findings regarding the beginning and ending dates of disability.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge